

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH L. HALL and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 98-1093; Submitted on the Record;
Issued August 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing under 20 C.F.R. § 8124(b).

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an injury causally related to factors of her federal employment and that the Office properly denied appellant's request for an oral hearing under 20 C.F.R. § 8124(b).

On March 3, 1997 appellant, then a 41-year-old clerk, filed a claim for an occupational disease (Form CA-2) alleging that she first realized that her carpal tunnel syndrome was caused or aggravated by her employment in early 1996. Appellant indicated that her employment duties involved sorting rather than keying the mail.

By decision dated October 2, 1997, the Office found the evidence of record sufficient to establish that appellant actually experienced the claimed employment factor, but insufficient to establish a diagnosed condition in connection with this employment factor. Accordingly, the Office denied appellant's claim. In a November 17, 1997 letter, appellant, through her counsel, requested an oral hearing before an Office representative.

By decision dated December 18, 1997, the Office denied appellant's request for an oral hearing as untimely filed.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the

presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹

In the present case, there is no medical evidence of record.² Therefore, appellant has failed to satisfy her burden of proof.

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."³ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁴

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant or deny a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁵

In this case, the Office issued its decision denying appellant's claim on grounds that she failed to establish fact of injury on October 2, 1997. Subsequently, appellant requested an oral

¹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

² Appellant indicated in her response to the Office's August 20, 1997 letter advising appellant to submit factual and medical evidence supportive of her claim, that she had not yet obtained a treating physician.

³ 5 U.S.C. § 8124(b)(1).

⁴ *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

⁵ *Henry Moreno*, 39 ECAB 475 (1988).

hearing by letter dated November 17, 1997. Inasmuch as appellant did not request a hearing within 30 days of the Office's October 2, 1997 decision, she is not entitled to a hearing under section 8124 as a matter of right. The Office also exercised its discretion but decided not to grant appellant a discretionary hearing on the grounds that she could have her case further considered on reconsideration by submitting relevant evidence. Therefore, the Office properly denied appellant's request for an oral hearing under section 8124(b) of the Act.

The December 18 and October 2, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.

August 16, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member